

Decision **PROPOSED DECISION OF ALJ KIM** (Mailed 3/18/2019)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
Southern California Edison Company  
(U338E) for a Certificate of Public  
Convenience and Necessity Concerning  
the Tehachapi Renewable Transmission  
Project (Segments 4 through 11).

Application 07-06-031

**DECISION DISMISSING PETITION FOR MODIFICATION****Summary**

This decision dismisses Southern California Edison Company's Petition for Modification (PFM) of Decisions 09-12-044, 13-07-018, and 14-01-005, seeking retroactive modification of the findings of maximum cost originally set in those decisions for the Tehachapi Renewable Transmission Project (Segments 4 through 11) to \$2,709 million (2016\$).

As discussed below, we dismiss the PFM because: (1) Public Utilities Code Section 1005.5 does not require a retroactive review of cost cap increase requests after the project is completed and in use; (2) the purpose of Section 1005.5 does not support retroactive review of such cost cap increase requests; and (3) there is no longer any actual controversy for which a Commission decision would have practical significance as it relates to the cost cap increase request sought in the herein PFM. Therefore, the request to raise the cost cap set forth in Southern

California Edison Company's PFM is dismissed as moot. This proceeding is closed.

## **1. Background**

The full Tehachapi Renewable Transmission Project (TRTP), including Segment 4 through 11, has been in service since December 2016. TRTP is a landmark project constructed to bring 4,500 Megawatts (MW) of renewable generation on line, marking a significant achievement toward California's renewable energy goals. TRTP provides electrical facilities necessary to reliably interconnect and integrate 4,500 MW of new renewable energy generation from the Tehachapi Wind Resource Area in Kern County and deliver it to load in Los Angeles and San Bernardino Counties in furtherance of California's Renewables Portfolio Standard goals.<sup>1</sup>

In 2009, the Commission granted Southern California Edison Company (SCE) a Certificate of Public Convenience and Necessity (CPCN) for TRTP (Segments 4 through 11),<sup>2</sup> with a total maximum cost of \$1.785 billion.<sup>3</sup> Thereafter and during the construction, we prospectively reviewed SCE's previous petition for modification to increase the project's maximum cost in order to allow additional expenditure for certain unforeseen equipment. We granted that petition, authorizing the prospective increase to a total maximum cost of \$2.01 billion.<sup>4</sup> This was the last determination of what the Commission found to be the maximum reasonable cost.

---

<sup>1</sup> SCE's Petition for Modification (PFM) at 3.

<sup>2</sup> Decision (D.) 09-12-044 at 2.

<sup>3</sup> *Id.* at 151.

<sup>4</sup> D.14-01-005 at 21.

In January 2017, SCE filed the instant PFM of Decisions 09-12-044, 13-07-018, and 14-01-005, seeking retroactive modification of the findings of maximum cost to \$2,709 million (2016\$).<sup>5</sup> SCE cited several reasons for additional increases to the actual TRTP (Segments 4 through 11) cost, including changes to project scope, schedule delays and work stoppages due to regulatory activity, unforeseen and increased environmental review activities, and higher costs than historical data used for original estimates.<sup>6</sup>

After SCE filed the PFM, we issued D.17-06-009 in Application 06-08-010. In D.17-06-009, we denied a similar PFM to retroactively increase the cost cap for the Sunrise Powerlink Transmission Project because it was moot.

In view of our issuance of the above decision, in November 2018, Administrative Law Judge (ALJ) Kim issued a ruling seeking comments regarding the retroactive maximum cost increase that SCE requested in the instant PFM (November 2018 Ruling). SCE, Public Advocates Office and The Utility Reform Network timely filed responsive comments to the November 2018 Ruling.

## **2. Discussion**

The main issue presented by the instant PFM is whether the Commission should retroactively increase the previously established cost cap, when the TRTP is already built and in service.

---

<sup>5</sup> SCE's PFM at 3.

<sup>6</sup> SCE's PFM at 3.

As discussed below and consistent with D.17-06-009, we conclude that Public Utilities Code<sup>7</sup> Section 1005.5 does not require a retroactive review of cost cap increase requests after all the costs have already been incurred, and the purpose of Section 1005.5 does not support retroactive review of cost cap increase requests. In addition, there is no longer any actual controversy for which a Commission decision would have practical significance as it relates to the cost cap increase request sought in the instant PFM. Therefore, we conclude, as we did in D.17-06-009, that the request to increase the cost cap in SCE's PFM is moot. The last maximum reasonable cost determined by the Commission was \$2.01 billion in D.14-01-005.

Code Section 1005.5 requires, *inter alia*, that the Commission must specify a reasonable and prudent maximum cost when granting a CPCN. The section also provides a process for the Commission to authorize an increase in the specified maximum cost if it finds and determines that the cost in fact increased after the issuance of a CPCN.<sup>8</sup> In doing so, the Commission must make findings as to whether public convenience and necessity warrant the project's construction at the new and increased cost.

Section 1005.5 clearly provides that the Commission's cost cap increase review is prospective before the cost at issue is expended.<sup>9</sup> In other words, we review the proposed cost increase before construction to determine if public convenience and necessity warrant the project's construction at the estimated

---

<sup>7</sup> All statutory references herein are to the California Public Utilities Code unless otherwise specified.

<sup>8</sup> Section 1005.5(b).

<sup>9</sup> D.17-06-009 at 10.

cost (at the CPCN application review stage) or at such increased additional cost (at the PFM to increase the established cost cap stage).<sup>10</sup>

In D.17-06-009, the Commission faced the same issue with a petition to retroactively increase the cost cap of the Sunrise Powerlink Transmission Project. Although the requested increase amount was different, the core issue was the same: Whether the Commission should review the previously established cost cap to increase the cost cap retroactively, after the project at issue was built and placed in service. Our answer was no in D.17-06-009, and our answer is no here.

Here, as in D.17-06-009, our retroactive review of the costs already incurred in the completed TRTP project does not serve Section 1005.5's purpose of reviewing the cost prospectively to determine whether public convenience and necessity warrant the project's construction at the cost presented, and whether the utility should continue with the project at that cost.

However, while the Commission has not determined anything over \$2.01 billion to be a reasonable maximum cost, under the applicable Federal Energy Regulatory Commission (FERC) authorities, SCE may seek to recover the amount of increase sought in the instant PFM (\$700 million) at FERC, in due course.<sup>11</sup>

Under these circumstances, the legal doctrine of mootness aptly applies. As we explained in D.17-06-009, a case is moot when there is no longer an actual controversy for our review, and our review and resulting decision would have no practical significance. On this point, the parties to this proceeding addressed the implications of D.17-06-009 to the instant PFM in their comments to the

---

<sup>10</sup> D.17-06-009 at 10.

<sup>11</sup> *Ibid.*

November 2018 Ruling. Consistent with D.17-06-009, they agreed that the instant PFM is moot.<sup>12</sup> Among the reasons cited by the three parties, the most common is that because it would be futile for the Commission to attempt to determine whether post-construction costs justify the project's completion, the Commission's review of a retroactive cost cap increase would neither have practical significance on the project's further construction and completion, nor would it have any bearing on whether continuing the project at the increased cost is in the public's convenience and necessity.

Based on the foregoing, we agree with the parties, follow D.17-06-009, and find that there is no longer any actual controversy for which a Commission decision would have practical significance. Therefore, we dismiss as moot SCE's request in the instant PFM to retroactively raise the cost cap.

### **3. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge Kim in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 18, 2019 by SCE. No reply comments were filed. No changes were made to the decision as a result of the comments.

---

<sup>12</sup> SCE's responsive comments also proposed that the Commission should either grant the maximum cost increase sought in its PFM, or, in the alternative, dismiss it as moot in accordance with D.17-06-009. SCE's Reply to Comments in Response to November 2018 Ruling at 2.

**4. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Kimberly Kim is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Decisions 09-12-044, 13-07-018, and 14-01-005 approved SCE's TRTP, including Segments 4 through 11, at a maximum reasonable cost of \$2.01 billion.
2. SCE's PFM seeks (1) modification of Decisions 09-12-044, 13-07-018, and 14-01-005, and (2) retroactive increase to the findings of maximum cost originally set in those decisions for the TRTP (Segments 4 through 11) to \$2,709 million (2016\$).
3. TRTP 4 through 11 is built and in service.
4. Hearings are not necessary.

**Conclusions of Law**

1. SCE's PFM should be dismissed because Section 1005.5 does not require a retroactive review of cost cap increase requests after all the costs have already been incurred.
2. SCE's PFM should be dismissed because retroactive review and increase to the project cost cap would not serve the purpose of Section 1005.5, which is to review the cost prospectively in order to determine whether the public convenience and necessity warrant the project's construction at the cost presented, and whether the utility should continue with the project at that cost.
3. SCE's PFM should be dismissed as moot because there is no longer an actual controversy for our review, and our review and resulting decision would have no practical significance.

4. This proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Edison Company's petition for modification requesting an increase of \$700 million for the Tehachapi Renewable Transmission Project 4-11 is dismissed.
2. Application 07-06-031 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Oxnard, California.